IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2356 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KIRITBHAI C PATEL HEIRS OF CHADUBHAI M PATEL

Versus

GIRDHARBHAI N BAROT

Appearance:

MR BJ JADEJA for Petitioner

MR RC JANI for Respondent No. 1, 2, 3, 4, 5, 6

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 09/03/2001

ORAL JUDGEMENT

#. Petitioner being aggrieved by the order made by the Mamlatdar & ALT in Tenancy Case No. 32/(1B) on 21st January, 1985 which was confirmed by the Collector, Petlad in Tenancy Appeal No. 24/85 on 7.1.86 and the order passed in Revision Application No. TEN.B.A.243/86

by the Gujarat Revenue Tribunal on 5.8.88 has preferred the present petition. From the record produced before the Court, it appears that father of the present petitioner was the owner of land bearing Survey No. 214/1 and other survey numbers being 214/2, 214/3, 214/4, 262/1 and 277 situated at village Sojitra, Taluka Petlad, district Kheda. Naranbhai Lallubhai Barot and others claimed that they were tenants of the lands referred to hereinabove and the proceedings under section 32G of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereafter to be referred to as "the Act") came to be initiated by Additional Mamlatdar & ALT (No.3) of Petlad by registering the Tenancy Case No. 139/140. After holding an inquiry an order was made on 28.3.62 whereby proceedings were dropped. It was held that the claimants were not entitled to purchase the land on 1.4.57.

#. It appears that thereafter proceedings were initiated suo moto under section 32(1)(B) of the Act being case No. Sojitra 32(1)(B)/3/78. The Mamlatdar & ALT came to a conclusion that neither the deceased nor the legal representatives were in cultivation and possession of the lands in dispute on 15.6.55 and proceedings were ordered to be dropped by an order dated 7.4.78. The said order of the Mamlatdar & ALT was taken in appeal by respondent no. 1 before the Deputy Collector, Petlad being Tenancy Appeal No. 106/81 and the Deputy Collector, Petlad was pleased to allow the said appeal and remanded the matter by his order dated 16.3.82. It appears that the Revenue Tribunal was approached by preferring revision application being No. TEN B.A. 899/82. The Tribunal directed for fresh inquiry. Ultimately Mamlatdar & ALT by an order dated 2.11.85 held that the respondents were entitled to the benefits of provisions of section 32(1)(B) of the Act. The petitioner challenged the same by way of an appeal and revision before the Collector and the Tribunal. However, having failed therein, the petitioner has preferred this petition.

#. Mr. Jadeja, learned counsel appearing for the petitioner submitted that in the instant case, proceedings were initiated under section 32(G) of the Act. Relevant provisions for the purpose of deciding this application are reproduced here as under.

> "32G. (1) As soon as may be after the tillers' day the Tribunal shall publish or cause to be published a public notice in the prescribed form in each village within its jurisdiction calling upon --

(a) all tenants who under section 32 are deemed to have purchased the lands

(b) all landlords of such lands, and

(c) all other persons interested therein,

to appear before it on the date specified in the notice. The Tribunal shall issue a notice individually to each such tenant, landlord and also, as far as practicable, other persons calling upon each of them to appear before it on the date of specified in the public notice.

(2) The Tribunal shall record in the prescribed manner the statement of the tenant whether he is or is not willing to purchase the land held by him as a tenant."

In the instant case, all persons interested therein were required to appear. It is submitted that the evidence of Dahiben makes it clear that the proceedings were initiated being Case No. 139/140 and she gave evidence on 8.1.61. It is also clear that the evidence was read over before the Court. When she was again examined, she admitted that whatever she has stated is true and she admitted that since before 1954, they were not in possession and that the possession was with the land owner. The order made by the Mamlatdar & ALT was not challenged by way of an appeal and since thereafter they were not in possession. Copy of the order made by the Mamlatdar & ALT is also produced on the record vide Annexure : G. On appreciation of the material placed before the Additional Mamlatdar & ALT on 28.3.62, he rendered the decision that since more than 8 years, the present respondents were not cultivating the land and the land was cultivated by the land owner. On 1.4.57, the respondents were not cultivating the land and the proceedings were terminated which were not challenged. It appears that even the names were deleted from 7 x 12 forms. Even the Tribunal has made a reference that for the period from 1955-56 to 1961-62, there are no entries.

#. The courts below have committed an error in allowing the proceedings under section 32 (1)(g) of the Act inasmuch as there was gross delay and the proceedings which were terminated under section 32G were not challenged. Section 32(1B) reads as under.

"32(1B): Where a tenant who was in possession of land on the appointed day (15.6.55) and who, on account of his being dispossessed of such land or any part thereof by the landlord at any time before the specified date (3.3.73) otherwise than in the manner provided in section 29 or any other provision of this Act is not in possession of such land or any part thereof and such land or part thereof is in the possession of the landlord or his successor-in-interest on the said date and such land or part thereof is not put to a non-agricultural use on or before the said date then the Mamlatdar shall, notwithstanding anything contained in the said section 29 or any other provision of this Act either suo motu or on an application of the tenant made within the prescribed period, hold an inquiry and direct that such land or as the case may be, part thereof shall be taken from the possession of the landlord or, as the case may be, his successor-in-interest and shall be restored to the tenant; and thereafter, the provisions of this section and sections 31A to 32A (both inclusive) shall so far as they may be applicable, apply thereto, subject to the modification that the tenant shall be deemed to have purchased such land or part thereof on the date on which such land or, as the case may be, part thereof is restored to him:

xxx xxx xxx xxx xxx xxx "

Dates underlined are added after perusing relevant provision for better assistance.

So far as the application to be made before the Mamlatdar & ALT, section has not specified the period. However, Rule 15A of the Bombay Tenancy & Agricultural Lands Rules, 1966 is required to be perused for the said purpose.

"An application under sub-section (1B) of section 32 by a tenant specified in the sub-section shall be made within a period of one year from commencement of Bombay Tenancy & Agricultural Lands (Gujarat Amendment) Act, 1972."

There is no dispute that the said Amendment Act came into force from 3.3.73 and therefore, an application should have been made on or before 2.3.74.

#. Mr. Jani, learned counsel appearing for the respondents submitted that the proceedings were initiated suo motu and therefore, there is no question of period of limitation. The proceedings could have been initiated at any point of time. In the case of State of Gujarat v. Raghav Natha [10 GLR 992] the Apex Court has pointed outas under.

> "12. ... that when no period of limitation is prescribed under section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised.
>
> 13. It seems to us that section 65 itself indicates the length of the reasonable time within which the Commissioner acts under section 211. Under section 65 of the Code, if the collector does not inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Secs.211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations atleast within a few months from the date of the permission. In this case the Commissioner set aside the order of the Collector on October 12, 1961, i.e. more than a year after the order, and it seems to us that this order was passed too late."

Learned counsel for the petitioner has placed before me the decision of the Apex Court in the case of Mohammed

Kavi Mohammad Amin v. Fatmabai Ibrahim [1997 SAR (Civil) SC 783], wherein the Apex Court has considered section 84C of the Act and has held as under.

> "... where no time limit is prescribed for exercise of power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time."

In that case, suo motu inquiry was started by the Mamlatdar in September, 1973. Considering several decisions, the Apex Court reiterated as above. In the instant case, action was initiated after long period i.e. more than three years and therefore also, the orders under challenge must be set aside. The petition is therefore allowed. Rule is made absolute.

*****

pirzada/-